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No. 84-1780

In The

Supreme Court of the United States

October Term, 1984

LINDA McMAHON, California Director
Of Social Services,

Petitioner,

vs.

ELIZABETH GREEN, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL THIRD APPELLATE DISTRICT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

May a state court award attorneys' fees under the Civil Rights Attorneys' Fees Award Act of 1976 (codified at 42 USC § 1988) in a class action in which equitable relief is sought and obtained against state officials, enjoining them from enforcing state regulations that conflict with the Aid to Families with Dependent Children (AFDC) provisions of the federal Social Security Act (codified at 42 USC § 602(a)(7))?

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STATUTES INVOLVED

California Code of Civil Procedure § 1021.5 provides:

> 1021.5. *Attorney fees; enforcement of important rights affecting public interest*
>
> Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor.

18A West's Annotated California Codes

California Code of Civil Procedure § 1028 provides:

> § 1028. *Award against state; payment from agency appropriation*
>
> Notwithstanding any other provisions of law, when the State is a party, costs shall be awarded against it on the same basis as against any other party and, when awarded, must be paid out of the appropriation for support of the agency on whose behalf the State appeared.

18A West's Annotated California Codes

California Code of Civil Procedure § 1095 provides:

> § 1095. *Judgment for applicant; damages, peremptory writ; officer of public entity as respondent*
>
> If judgment be given for the applicant, the applicant may recover the damages which the applicant has sus-

tained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and a peremptory mandate must also be awarded without delay. Damages and costs may be enforced in the manner provided for money judgments generally. In all cases where the respondent is an officer of a public entity, all damages and costs, or either, which may be recovered or awarded, shall be recovered and awarded against the public entity represented by the officer, and not against the officer so appearing in the proceeding, and are a proper claim against the public entity for which the officer appeared and shall be paid as other claims against the public entity are paid; but in all such cases, the court shall first determine that the officer appeared and made defense in the proceeding in good faith. For the purpose of this section, "public entity" includes the state, a county, city, district or other public agency or public corporation. For the purpose of this section, "officer" includes officer, agent or employee.

18A West's Annotated California Codes,
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STATEMENT OF THE CASE

This has been a 42 USC § 1983 action from the very beginning: respondents (hereinafter "recipients") commenced this class action in 1975, alleging that petitioner, (hereinafter "Director"), a state official, was enforcing state regulations which conflicted with the Aid to Families with Dependent Children (AFDC) provisions of the federal Social Security Act (codified at 42 USC § 602(a)(7)). Both the trial court and the California Supreme Court held the regulations invalid on the ground that they conflicted with § 602(a)(7). See *Green v. Obledo* (1981)

29 Cal.3d 126, 624 P.2d 256. Recipients thus prevailed on their § 1983 claim in both courts. Recipients were then awarded equitable relief against continued enforcement of the regulations and retroactive relief affording class members the opportunity to recover the benefits withheld from them in violation of § 602(a)(7). *Ibid.*

Following the decision of the California Supreme Court granting recipients relief on their § 1983 claim, recipients commenced proceedings to recover attorneys' fees from the Director. As a result, $34,439.50 in fees became due and payable May 8, 1981 and an additional $56,246.25 in fees became due and payable May 27, 1982.

These fees were awarded under California Code of Civil Procedure § 1021.5 (hereinafter "CCP § 1021.5") the codification of the state private attorney general theory. Provisions in the state budget act prevented collection of these awards under CCP § 1021.5.[1] However, these pro-

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1. These provisions limited the amounts of such awards and the hourly rates from which they are computed so that only a fraction of the award in this case could be collected. The validity of such provisions under state law is a question now pending before the same California court of appeal which decided this case. The pending case is *Cooper, et al. v. Obledo, et al.* (Sacramento Superior Court No. 219 145) 3 Civ. —— (notice of appeal filed May 7, 1985). Each state budget act prescribes appropriations for a single fiscal year only. A new state budget act must be enacted each year (see California Constitution, Article IV, § 12(c), 1A West's Annotated California Codes). An additional question before the court of appeal in *Cooper, ante,* is whether, under the state constitution, restrictions in subsequent budget acts can limit payment of a judgment which became final before enactment of that legislation.

visions were not intended to, and do not, apply to awards under the Civil Rights Attorneys' Fees Award Act of 1976 (codified at 42 USC § 1988); furthermore, other budget act provisions expressly authorize payment of such statutory awards (Petition, App. A, p. 10a n.8). Therefore, to avoid these impediments to collection under CCP § 1021.5, the recipients moved the trial court for an order compelling payment of the fees[2] under § 1988, which is closely analogous to CCP § 1021.5.[3] The recipients pointed out that they were entitled to an award under § 1988 because they had prevailed on their § 1983 claim. Recipients also demonstrated that there was no difference between § 1988 and CCP § 1021.5 in computing the amount of the award and that the § 1988 entitlement raised no issues not already decided by the court in making the CCP § 1021.5 award. The trial court denied the motion without stating reasons and the recipients appealed.

The California Court of Appeal agreed with recipients and required that the Director take action to cause

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2. The Director implies that the recipients have sought an order compelling the state to appropriate money to pay these fees and asserts that the state is unable to pay the fees. Petition, p. 7. Throughout the litigation, the Director has been relentlessly inaccurate on this. The recipients have never sought to compel an appropriation; they have simply sought an order compelling payment from existing appropriations (see Petition, App. A, pp. 2a, 10a-11a) which, under state law, are available for such payment (*Mandel v. Myers* (1981) 29 Cal.3d 531, 543-544, 629 P.2d 935, 941-943; *Serrano v. Priest* (1982) 131 Cal.App.3d 188, 197-198, 182 Cal.Rptr. 387, 393).

3. See *Serrano v. Unruh* (1982) 32 Cal.3d 621, 632-634, 632 n.13, 632-633 n.14, 652 P.2d 985, 991-993, 991 n.13, 992 n.14.

the fees to be paid.[4] The Director then filed a petition for rehearing and that was denied. The Director next filed a petition for hearing in the California Supreme Court and that was denied. The Director now petitions this Court for relief from paying these awards.

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ARGUMENT

The California Court of Appeal decided that (1) recipients had pleaded facts sufficient to state a cause of action under 42 USC § 1983; (2) fees were therefore awardable under 42 USC § 1988; and (3) there were no state law restrictions on the payment of such an award.[5]

The decision of the Court of Appeal is correct. It does not conflict with the decision of any other state court of last resort, of any federal court of appeals, or of this Court. Moreover, the question presented by this case has been recently settled by this Court in *Maine v. Thiboutot* (1980) 448 U.S. 1, a landmark decision grounded upon twelve years of decisions by this Court involving § 1983 claims based on violations of the federal Social Security

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4. The Director asserts, without any support, that "[a]s a result [of the Court of Appeal decision] many heretofore uncollectibly large judgments are now eligible for conversion to, and enforcement as, judgments in civil rights actions." (Petition, p.9). There is no more support for this remark in the record than there is in the Petition.

5. The Court of Appeal did not reach the Supremacy Clause issues described by the Director (Petition, pp. 8-9) because it did not need to do so. Petition, App. A, p. 6a, n.4.

Act (*Id.* at 4, 5-6). The petition for writ of certiorari should be denied.

I. THE QUESTION PRESENTED BY THIS CASE HAS BEEN DECIDED IN RESPONDENTS' FAVOR BY THIS COURT IN MAINE v. THIBOUTOT.

The absence of any mention of *Maine v. Thiboutot* from the Petition is conspicuous and the implication is clear: it cannot be distinguished from this case. In *Thiboutot* a class action was commenced alleging that state officials were enforcing state regulations which conflicted with the AFDC provisions of 42 USC § 602(a) (7). 448 U.S. at 2-3. As a result Maine disallowed the deduction of certain expenses and reduced AFDC grants accordingly. *Id.* at 3; see *Thiboutot v. State* (Me. 1979) 405 A.2d 230, 232. The court held the regulations invalid on the ground that they conflicted with § 602(a) (7) and the plaintiffs were awarded equitable relief against continued enforcement of the regulations and retroactive relief affording class members the opportunity to recover the benefits withheld from them in violation of § 602(a) (7). *Id.* at 2-3. The trial court denied attorneys' fees to plaintiffs under 42 USC § 1988 but the Supreme Judicial Court of Maine reversed, holding that fees could be awarded under 42 USC § 1988. 405 A.2d at 239-240. This Court affirmed that decision. 448 U.S. at 4.

This case is indistinguishable from *Thiboutot*. Recipients commenced a class action alleging that state officials were enforcing state regulations which conflicted with 42 USC § 602(a) (7). *Green, ante,* 29 Cal.3d at 132,

624 P.2d at 258-259. As a result California disallowed the deduction of certain expenses and reduced AFDC grants accordingly. 29 Cal.3d at 132-133, 624 P.2d at 259. Both the trial court and the California Supreme Court held the regulations invalid on the ground that they conflicted with § 602(a) (7) and recipients were awarded equitable relief against continued enforcement of the regulations and retroactive relief affording class members the opportunity to recover the benefits withheld from them in violation of § 602(a) (7). *Green, ante,* 29 Cal.3d 126, 624 P.2d at 256. The trial court denied recipients' motion to compel payment of its attorneys' fees awards under 42 USC § 1988, but the California Court of Appeal held that those fees were awardable under 42 USC § 1988. Petition, App. A.

The Director claims that the availability of a "comprehensive federal-state statutory remedy" bars an award of fees under 42 USC § 1988. Petition, pp. 11-12. This obviously ignores the existence of *Thiboutot* in which the same federal-state statutory 'scheme' did not preclude the award of fees under § 1988. In addition, the Director ignores the holding of the California Supreme Court in *Ramos v. County of Madera* (1971) 4 Cal.3d 685, 690-691, 484 P.2d 93, 96-97: the federal-state AFDC system provides no remedy corresponding to the class relief sought in this case and there is therefore no requirement that remedies provided by that system be exhausted prior to seeking such class relief.

The *Thiboutot* decision requires that the petition for certiorari be denied. See also *Shea v. Vialpando* (1974) 416 U.S. 251, 257-258.

II. THE DECISION OF THE CALIFORNIA COURT OF APPEAL DOES NOT CONFLICT WITH SPENCER v. SOUTH CAROLINA TAX COM'N.

Spencer is a very different case from this one. In *Spencer* North Carolina residents filed an action for an income tax refund, claiming that South Carolina law violated the Privileges and Immunities Clause. (S.C. 1984) 316 S.E.2d 386, 387. The trial court granted the refund but denied attorneys' fees and the South Carolina Supreme Court affirmed. *Ibid.* State law provided that in such refund actions there were to be no awards of costs or disbursements to either party and the state supreme court held that state remedies could not be "circumvented" by alleging a 42 USC § 1983 violation. *Id.* at 388-389. The South Carolina Supreme Court, noting that the trial court had ignored the § 1983 claim, also emphasized that this Court had not required state courts to exercise jurisdiction over such claims. *Ibid.*

The questions presented to this Court in the petition for certiorari in *Spencer* were:

> (1) May state court of general jurisdiction refuse to entertain 42 USC 1983 claim and thereby avoid awarding attorneys' fees under § 1988, even though taxpayer successfully challenges constitutionality of state statute in that court? (2) May state court deny attorneys' fees under §§ 1983 and 1988 on ground that Congress did not intend to require award of attorneys' fees where state law provides remedy and prohibits award?
>
> 53 U.S.L.W. 3281 (U.S. No. 84-249)

Neither of these questions is presented by this case. Whether a state court may refuse to exercise jurisdiction over a § 1983 claim is not presented because the California

courts in this case did not refuse to exercise jurisdiction over recipients' § 1983 claim. This Court has previously noted that a case from the California courts does not present this question because those courts have chosen to exercise jurisdiction over § 1983 claims. See *Martinez v. California* (1980) 444 U.S. 277, 283-284 n.7. The question of awarding fees under § 1988 in a case where state law provides a remedy and prohibits such an award does not arise because in this case the state legislature has chosen not to prohibit or restrict the payment of § 1988 fee awards (Petition, App. A, p. 9a) and, in fact, has expressly authorized the payment of such statutory awards (*Id.*, p. 10a n.8). Moreover, in contrast to South Carolina's prohibition of awards of costs and disbursements in tax refund actions, California expressly requires payment of costs (which include statutory fee awards) by state agencies in actions like this one. See California Code of Civil Procedure §§ 1028, 1095 (an action for injunctive relief against state officials in their official capacity is an action in which the state is a party within the meaning of § 1028. *Boland v. Cecil* (1944) 65 Cal.App.2d Supp. 832, 150 P.2d 819); and see n.8, *post* p. 16.

Thiboutot, ante, 448 U.S. 1, is dispositive of the petition for writ of certiorari. *Spencer* has no bearing on it.

III. THE TIMELINESS OF AFFIXING A "42 USC § 1983 LABEL" TO A § 1983 CAUSE OF ACTION IN STATE COURT PRESENTS NO FEDERAL QUESTION.

The Director complains that recipients' failure to label their cause of action a 42 USC § 1983 claim until after trial presents important questions of federal law. Petition,

pp. 13-15. Actually, this matter presents no federal question at all—it is a matter controlled by state law. It is well settled in both federal and state jurisdictions that, in state court actions based upon federal statutes, the law of the state is controlling in all matters of practice and procedure (absent contrary provisions in the federal statute, and there are none in this case). See *Ches. & Ohio Ry. v. De Atley* (1916) 241 U.S. 310, 316-317; *King v. Schumacher* (1939) 32 Cal.App.2d 172, 181, 89 P.2d 466, 472 *cert. den.* 308 U.S. 593 (1939). Accordingly, the decision by the court of appeal on this 'labelling' issue presents no federal question.[6]

Moreover, under California law there is no difference between § 1988 and CCP § 1021.5 (under which fees were awarded in this case in 1981 and 1982) in computing the amount of the fee award, and the § 1988 entitlement raised no issues not already decided in adjudicating the CCP § 1021.5 entitlement. See Petition, App. A, pp. 5a-6a. Accordingly, absolutely no prejudice to the Director has resulted from the failure to affix the "42 USC § 1983 label" earlier. *Ibid.*

The Director offers a lengthy discussion of "immunities." Petition, pp. 13-15. This discussion has nothing whatsoever to do with this case. This is not and never

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6. The court of appeal held that recipients' failure to affix the "42 USC § 1983 label" until after trial was immaterial. California law is clear on this point. *See People v. Common Counsel* (1890) 85 Cal. 369, 371, 24 P. 727, 728; *Shields v. Oxnard Harbor District* (1941) 46 Cal.App.2d 477, 486, 116 P.2d 121, 127-128; and see generally 3 Witkin, *California Procedure* (2d ed. 1971), Pleading, § 22; James, *Civil Procedure* (1965) § 3.7 at p. 107.

has been an action for damages.[7] This has always been an action against state officials for equitable relief, relief sought and obtained against them in their official capacities, not in their individual capacities. Recipients have never claimed or offered any evidence that the Director is liable for anything in her individual capacity and nothing in this case suggests any possibility for such liability. The attorneys' fees awarded in this case are against the Director in her official capacity (see Petition, App. A, pp. 10a-11a) and it is firmly established that such awards are payable from funds of the responsible state agency or from other state funds. See, e.g., *Hutto v. Finney* (1978) 437 U.S. 678, 693, 700; see also Petition, App. A, pp. 7a, 9a-10a.[8]

———o———

7. Even if it were, "[t]he legislative history of [42 USC § 1988] confirms Congress' intent that an attorney's fee award be available even when damages would be barred or limited by 'immunity doctrines and special defenses, available only to public officials'." *Pulliam v. Allen* (1984) — U.S. —, 80 L.Ed.2d 565, 580; and see *Supreme Court of Virginia v. Consumers Union of the United States* (1980) 446 U.S. 719, 738-739.

8. Moreover, California law requires that these fees be recovered from the state agency, not from the Director (this action was brought pursuant to California Code of Civil Procedure § 1085, and §§ 1028 and 1095 of that Code impose this requirement inasmuch as fees awarded pursuant to statute are costs in California. See, e.g., *T.E.D. Bearing Co. v. Walter E. Heller & Co.* (1974) 38 Cal.3d 59, 62, 112 Cal.Rptr. 910, 912; see also Petition, App. A, p. 7a n.5.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

Date: July 2, 1985

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